

**DISTRICT OF COLUMBIA OFFICE OF CABLE TELEVISION AND
TELECOMMUNICATIONS****NOTICE OF FINAL RULEMAKING**

The Interim Executive Director of the Office of Cable Television and Telecommunications, pursuant to section 803 of the Cable Television Reform Amendment Act of 2002, effective October 9, 2002 (D.C. Law 14-193; to be codified at D.C. Official Code § 34-1258.03 *et seq.*), hereby gives notice of the adoption of the following new chapter of Title 15 of the District of Columbia Municipal Regulations, entitled "Allocation of Public, Educational, and Government (PEG) Cable Television Channels." This chapter would establish the rules for the allocation of public, educational, and government (PEG) cable television channels, whether analog, digital, or other type, provided by a cable television system operator or an open video system operator in the fulfillment of its obligations under a franchise agreement or any other agreement. Final action to adopt this rulemaking was taken on July 28, 2003. No comments were received and no changes have been made to the text of the proposed rulemaking published on June 27, 2003 (50 DCR 5200 – 5205). This final rulemaking shall be effective upon publication in the D.C. Register.

Title 15 of the District of Columbia Municipal Regulations is amended by adding the following Chapter 33:

CHAPTER 33**ALLOCATION OF PUBLIC, EDUCATIONAL, AND GOVERNMENT (PEG)
CABLE TELEVISION CHANNELS****3300 INTENT AND POLICY**

- 3300.1 Pursuant to section 803 of the Cable Television Reform Amendment Act of 2002, effective October 9, 2002 (D.C. Law 14-193; to be codified at D.C. Official Code § 34-1258.03 *et seq.*), this chapter establishes the rules for the allocation of public, educational, and government (PEG) cable television channels, whether analog, digital, or other type, provided by a cable television system operator or an open video system operator in the fulfillment of its obligations under a franchise agreement or any other agreement.
- 3300.2 It is the intent of the Office of Cable Television and Telecommunications (OCTT) to insure that all PEG channels be effectively used by the District, through qualified entities, to serve the residents of the District and provide them with valuable information as well as provide a forum for public expression and debate of public issues through the medium of cable television.

- 3300.3 The failure of OCTT or any entity to comply with these rules shall in no circumstances release, or be construed as releasing, a cable television system operator or an open video system operator from its obligations, including its obligation to transmit PEG channels, under its franchise agreement or any other agreement with the District.

3301 ALLOCATION OF CHANNELS

- 3301.1 Subject to the restriction provided in subsection 3301.5, OCTT may allocate channels to any entity, which may include the following:
- (a) The Mayor;
 - (b) The Council;
 - (c) Public Access Corporation;
 - (d) The University of the District of Columbia;
 - (e) District of Columbia Public Schools; and
 - (f) Other governmental agencies or institutions, nonprofit organizations, and educational institutions.
- 3301.2 In carrying out these objectives, OCTT shall ensure that at all times:
- (a) At least one (1) channel on the analog tier of cable television channels provided by the District's cable television system operators or open video system operators is allocated to the Mayor for use as a government channel;
 - (b) At least one (1) channel on the analog tier of cable television channels provided by the District's cable television system operators or open video system operators is allocated to the Council for use as a government channel;
 - (c) At least one (1) channel on the analog tier of cable television channels provided by the District's cable television system operators or open video system operators is allocated to the University of the District of Columbia (UDC) for use as an educational channel;
 - (d) At least one (1) channel on the analog tier of cable television channels provided by the District's cable television system operators or open video system operators is allocated to the District of Columbia Public Schools (DCPS) for use as an educational channel; and
 - (e) At least two (2) channels on the analog tier and two (2) channels on the digital tier of cable television channels provided by the District's cable television system operators or open video system operators are allocated to the Public Access Corporation (PAC) for use as public channels.
- 3301.3 The remaining channels after the minimum allocations as provided in subsection 3301.2 shall be allocated by OCTT pursuant to these rules.

- 3301.4 The discretionary allocation provision in subsection 3301.3 and the application procedure in section 3302 shall not apply to additional channels requested by the Mayor or the Council for their use. Such additional channels shall be allocated by OCTT upon request of the Mayor or the Council, subject to availability.
- 3301.5 Allocation of channels on the analog tier shall be subject to the approval of the Council, except that Council's approval shall not be required for allocations made to the Mayor or the Council for their use. Allocation of channels on the digital tiers shall not be subject to the approval of the Council.

3302 APPLICATION PROCEDURE

- 3302.1 Whenever a channel becomes available on the system of any District cable or open video system operator, OCTT shall publish a notice in the District of Columbia Register. The notice shall state the closing date for the submission of an application. Such closing date shall not be sooner than 30 days after the publication of the notice. The notice may state any other applicable application criteria and required information.
- 3302.2 Applications for channels must be submitted in writing to the Executive Director of OCTT by the due date specified in the published notice.
- 3302.3 Applications for a channel shall contain the following minimum information:
- (a) Name and address of the applicant;
 - (b) Contact person(s) and title(s);
 - (c) Names and biographies of the organization's management, Board (if applicable), and proposed channel management;
 - (d) Summary of the applicant's organizational history, current and/or planned organizational chart and mission statement as well as the applicant's current programs, activities, and accomplishments;
 - (e) A detailed statement demonstrating the need for the channel;
 - (f) Detailed proposal of the applicant's projected use of the channel, including programming proposals, show formats, and core issues and subjects to be featured;
 - (g) Description of how the channel will serve the applicant's overall goals;
 - (h) Detailed demonstration of the applicant's financial ability to operate a cable channel, including a proposed budget for operation of the channel and source of funding and how the applicant plans to support the channel continuously;
 - (i) Description of the applicant's technical ability to operate a cable television channel, including a description of the current and

proposed operating equipment and resources and a description of the qualifications and responsibilities of the staff and volunteers who will be working with the channel; and

- (j) Description of the current or proposed facility for the operation of the channel.

- 3302.4 OCTT shall review each application, confirm the need stated by each applicant, and determine whether each applicant has the ability to operate a channel and satisfy such stated need. In making this determination, OCTT may conduct technical inspections and tests of the applicant's facility and equipment and may request additional information.
- 3302.5 OCTT may elect to hold a public hearing and receive testimony on any application. OCTT may hold a combined hearing to review several applications. OCTT shall publish a notice of such public hearing in the District of Columbia Register and shall hold the hearing no less than 15 days after the notice.
- 3302.6 OCTT may deny an application if it determines that the need for the channel does not exist or that the applicant lacks the technical, financial, managerial or other capabilities to operate a channel.
- 3302.7 After reviewing the applications, OCTT may (i) determine that no applicant has submitted an application sufficient to justify designation of the available channel and issue a final determination of such or (ii) approve one application as the most qualified to operate the available channel.
- 3302.8 If an application is approved for a channel on the analog tier, then within 90 days of such approval or, if applicable, within 90 days of executing a PEG Operating Agreement with the applicant as provided in section 3303, OCTT shall propose a resolution to the Council for approval of the allocation pursuant to subsection 3301.5. The resolution shall provide that the operation of the allocated channel shall be subject to these rules.
- 3302.9 Within 90 days of (i) OCTT's allocation of any channel pursuant to these rules or the Council's approval of such allocation and (ii) if applicable, the execution of a PEG Operating Agreement by the applicant, OCTT shall notify cable and open video system operators in the District to include such channel as one of the District's PEG channels. The notice shall provide details of the allocation and available information on the applicant.

3303 OPERATING AGREEMENT (PEGOA)

- 3303.1 Except for the Mayor, the Council and the Public Access Corporation, all entities to which a channel is allocated shall enter into a PEG Operating Agreement (PEGOA) with the District.
- 3303.2 The PEGOA shall include, but not be limited to, the following provisions:
- (a) Responsibility for programming and management of the allocated channel;
 - (b) Prohibition of censorship or control over programming, except as necessary to comply with prohibition of illegal material;
 - (c) Prohibition of commercial use;
 - (d) Prohibition of obscene material;
 - (e) Use of allocated channel time, cablecasting facilities, and technical support as are provided for in the franchise agreement between the District and a cable or open video system operator;
 - (f) Public inspection of programming records;
 - (g) Grounds for the rescission of channel allocation; and
 - (h) Regular review of operational, technical, and financial abilities to operate the allocated channel;
 - (i) Probationary period of two (2) years; and
 - (j) Administrative fees which may be payable to the District.

3304 REVOCATION OF CHANNELS

- 3304.1 Subject to a notice and an opportunity to cure, OCTT may revoke a channel allocation at any time and pursuant to these rules and the applicable PEGOA if OCTT finds that such channel has been operated in violation of these rules, the District's cable law, or the applicable PEGOA.
- 3304.2 If OCTT decides to revoke a channel allocation, it shall provide a notice in writing to the channel operator stating in detail the violations and how they can be cured. The notice shall provide a period of not less than 30 days for the entity to cure such violations.
- 3304.3 OCTT may hold a hearing and receive testimony regarding the proposed revocation of a channel. OCTT shall publish a notice of such public hearing in the District of Columbia Register.
- 3304.4 If a channel operator has fully cured the violations to OCTT's satisfaction within the requisite period, OCTT shall cease the revocation process; otherwise, OCTT shall issue an order revoking the channel designation.
- 3304.5 The revocation of a channel shall not serve as a permanent bar against the allocation of a channel to such operator, except that the circumstances of

the revocation may be considered by OCTT if the operator reapplies for a channel.

- 3304.6 Within seven (7) days of revoking any channel, OCTT shall notify cable and open video system operators in the District to cease including such channel as one of the District's PEG channels.